

LAW AND CONTEMPORARY PROBLEMS

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FOREWORD

The fact that statutes regulating the sale of securities exist in forty-seven of the forty-eight states, and that some of them have been in existence for as long as a quarter of a century, testifies that the present lively interest in the regulation of securities sales is not an overnight development. Although the various state statutes differ significantly both as to underlying theory and the degree of their effectiveness, it is undoubtedly true that they were chiefly inspired by a common purpose of protecting the investor from the unscrupulous corporate promoter. As time passed and experience accumulated and economic conditions became better understood, it was gradually realized that the fundamental problem of protecting the investor was far broader than that of merely preventing fraud. Of equal if not of greater importance was the necessity of affording investors the information essential to a discriminating selection of securities. This difficulty of selection had its origin in the tremendous concentration of wealth which has occurred in the last hundred years. At the beginning of the nineteenth century and for a considerable period of time thereafter, the business units of this country were relatively small and individualized. Modern conditions present quite a different picture. At the present time a large proportion of the national wealth is concentrated in the hands of a relatively small number of immense corporations. Their activities are greatly diversified and their domains, which are virtual economic empires, are frequently scattered over immense areas in this country and abroad.

Because this immense concentration of wealth has made it increasingly difficult for the investor to obtain an understanding of the modern business enterprise and its financial condition, it is especially important that comprehensive and thoroughly reliable information be available. It is not unreasonable to believe that the absence of such information over a period of time might seriously impair the needed flow of capital into industry.

In 1933 Congress enacted the Federal Securities Act to insure the availability, for investment purposes, of accurate and complete information with respect to every issue of securities (with certain exceptions) thereafter sold in interstate commerce or through the mails. The initial heat accompanying the passage of this Act has largely abated during the three and a half years it has been in effect, and the time now seems ripe to attempt a dispassionate picture of the Act in operation. It is the purpose of this symposium to present in broad outline the machinery used to accom-

plish the objective of the Securities Act, to appraise the degree of its success from various points of view, and to note the readjustments it has caused in the economic system to which it relates.

Original plans called for the presentation of the symposium in a single issue, but as the project crystallized it became apparent that adherence to such a program would entail a ruthless sacrifice of important and timely material. As a consequence the decision was reached to divide the symposium into two parts. And it should be said parenthetically that even in its expanded form the symposium does not treat either of the liability and penal provisions of the Act nor of the problem of constitutionality. Accurate and comprehensive treatments of these subjects have already made their appearance, and it seemed desirable to sacrifice the abstract symmetry of the symposium in order to include material on more neglected phases of the Act.

The plan of Part I of the symposium, which is presented in this issue, is sufficiently indicated by the titles of the articles set out in the table of contents. Part II, which will be published in the forthcoming April issue, will be introduced by an article by Professor Brunson MacChesney of the University of California and Robert O'Brien of the Securities and Exchange Commission dealing with the "fair disclosure" requirements of the Act. Arthur H. Dean of the New York Bar will present an article discussing various problems encountered by the lawyer in the preparation of the registration statement. Professor Thomas H. Sanders of the Harvard Graduate School of Business Administration will treat the accounting aspects of the Act. Closely allied to the problem of fair disclosure with respect to new issues is that involving the issuance of securities as a result of the reorganization of insolvent companies, already a subject of investigation and study by the Commission. Professor Abe Fortas of the Yale Law School will contribute an article on this subject. The inter-relation between the Securities Act and state securities legislation will be considered in an article by Russell Smith of the New York Bar. The symposium will be concluded by an article by Professor John Hanna of the Columbia Law School in which he depicts the various ways and means by which the purposes of the Securities Act are furthered by the Securities and Exchange Act of 1934.

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